

ESTATE OF JANE ECKIWAUDAH,
a.k.a. EMMA CHAHSENAH

IBIA 81-9

Decided October 30, 1981

Appeal from order by Administrative Law Judge Daniel S. Boos approving will.

Affirmed.

1. Indian Probate: Evidence: Insufficiency of--Indian Probate: Wills: Testamentary Capacity--Indian Probate: Wills: Undue Influence

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

APPEARANCES: Oliver E. Davis, Esq., for appellants Rachel Yellowfish, Irene Yellowfish Ahhaitty, Violet Yellowfish Nanmi, Alma Yellowfish Ototvio, Yvonne Chahsenah Trujillo, James Chahsenah, and Orris Samuel Chahsenah; Amos E. Black III, Esq., for appellees John H. Chahsenah and Earl Chahsenah.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellant children of decedent Jane Eckiwaudah also known as Emma Chahsenah seek review of an order approving decedent's will, which expressly omitted appellants from any share of decedent's trust property. Decedent's trust property was devised entirely to appellees John and Earl Chahsenah, both sons of decedent. The will executed on January 7, 1975, repeated the terms of an earlier will dated July 2, 1956. In the June 9, 1980, order approving will, the Administrative Law Judge made findings of fact and conclusions of law based upon a record of evidentiary hearings held on June 5, 1979, and April 22, 1980, into the probate of decedent's will.

The testimony of appellants, which is uncontradicted, establishes that decedent was 82 years old when she made the contested will, and that she suffered two strokes in 1973 and then lost the power of speech, became forgetful, and suffered from poor eyesight. The testimony of the attesting witnesses to the will establishes, however, the decedent demonstrated she knew the extent of her property when she executed the will, understood the nature of the testamentary act, and knew the natural objects of her bounty and the distribution she wished to make of her trust property. There is no evidence of any influence exercised upon decedent by anyone, nor is there a showing that any of her children were aware that she had made her will until sometime after it was executed.

Appellants contend before this Board that decedent lacked testamentary capacity and was subjected to undue influence sufficient to require that the will be set aside. It is also claimed that appellants have discovered new evidence to support their contentions concerning the circumstances surrounding the making of the will.

An examination of the transcript of the proceedings before the Administrative Law Judge indicates the alleged errors are without factual foundation. More than 30 days have passed since appellants filed their notice of appeal (denominated "Statement of Appellant") with the Board. No showing that new evidence exists has been offered to the Board, nor has an affidavit to describe the nature of the evidence nor any brief in support of the notice of appeal been filed. The "Statement of Appellants" reiterates generally the "Petition for Rehearing" filed earlier by appellants with the Administrative Law Judge, which was properly denied by him for insufficiency under Departmental regulation.

The order admitting will to probate is supported by the evidence of record. Appellants' allegations of error are without merit. Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order approving will is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge